

**In the United States District Court
for the Southern District of Georgia
Brunswick Division**

KELBY STUDSTILL,

Plaintiff,

v.

APPLING COUNTY, APPLING
COUNTY SHERIFF'S DEPARTMENT,
SHERIFF BENNY DELOACH,

Defendants.

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CV 216-130

ORDER

On September 16, 2016, this case with claims Under 42 U.S.C. Section 1983 was removed to this Court. Dkt. No. 1. On September 23, 2016, Defendants Appling County, Appling County Sheriff's Department, and Sheriff Benny DeLoach ("Defendants") filed a Motion to Dismiss (Dkt. No. 6). Defendants also filed an Answer to Plaintiff's Complaint (Dkt. No. 7.). Plaintiff did not file a timely response to the motion to dismiss. Rather, Plaintiff filed a Motion for Voluntary Dismissal Without Prejudice (Dkt. No. 11). Defendants have objected to Plaintiff's motion to the extent that it seeks an order dismissing the case without imposing conditions upon Plaintiff's

ability to refile the same case. Dkt. No. 6 pp. 2-3. Defendants argue that they have already incurred expenses responding to this action and will suffer further prejudice if Plaintiff is allowed to re-file this action at a later date. Id. Federal Rule of Civil Procedure 42(a)(2) provides that after an answer is filed, "an action may be dismissed at the Plaintiff's request only by court order, on terms that the court considers proper." Therefore, voluntary dismissal without prejudice is not granted as a matter of right. Fisher v. Puerto Rico Marine Mgmt., Inc., 940 F.2d 1502 (11th Cir. 1991).

Here, allowing dismissal of this action will not cause Defendants clear prejudice outside of a possible refiled action. Pontenberg v. Boston Scientific Corp., 252 F.3d 1253, 1255 (11th Cir. 2001) (finding that the court should consider whether a defendant would "lose any substantial right by the dismissal"). All parties now agree that this case should be dismissed. The Court finds, however, that a dismissal without prejudice shall be conditional. Specifically, should Plaintiff decide to re-file this action in any court, Plaintiff must pay the cost incurred by Defendants in responding. This may include court costs and reasonable attorney's fees.

Therefore, for the reasons stated above Plaintiff's Motion for Voluntary Dismissal Without Prejudice (Dkt. No. 11) is hereby **GRANTED** with the conditions stated above. Defendants'

Motion to Dismiss (Dkt. No. 6) is **DENIED AS MOOT**. On the condition stated herein, this case is **DISMISSED WITHOUT PREJUDICE**. The Clerk is **DIRECTED** to close this case.

SO ORDERED, this 7th day of November, 2016.

A handwritten signature in black ink, appearing to read 'L. Godbey Wood', written over a horizontal line.

LISA GODBEY WOOD, CHIEF JUDGE
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF GEORGIA